

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE ELECTRONIC BOOKS ANTITRUST
LITIGATION

Action Pending in:
United States District Court, Southern District
of New York (11-md-02293-DLC)

Case No.

**[PROPOSED] ORDER GRANTING
MOTION TO QUASH OR
MODIFY SUBPOENA DUCES
TECUM**

**NOTED FOR CONSIDERATION:
FRIDAY, OCTOBER 5, 2012**

This matter came before the Court on Amazon.com's ("Amazon") Motion to Quash or Modify Subpoena Decus Tecum. Having considered the materials submitted by the Parties, it is hereby ORDERED that the Motion is GRANTED and the Subpoena is modified as follows:

1. Amazon will produce transaction-level data regarding eBook sales in the form previously agreed to among Amazon and all Parties (without any identifying customer information), subject to agreement among all parties to a supplemental protective order covering the data in a form that is acceptable to Amazon.

2. Amazon will produce transaction-level data regarding pBook sales (without any identifying customer information), subject to agreement among all parties to a supplemental protective order covering the data in a form that is acceptable to Amazon. The Parties will continue to discuss the precise scope and form of the data to be produced, but the scope of the

1 production will be as close to the eBook data described in ¶ 1, above, as is reasonably possible.

2 3. Amazon will search the electronically stored information (“ESI”) of the following
3 document custodians, using the search term list attached hereto as Appendix A: Russell
4 Grandinetti, David Naggar, Laura Porco, Steve Kessel; the time period covered by the search
5 shall be January 1, 2008 – April 11, 2012, except

- 6 • Amazon will not re-review documents previously produced in conjunction with
7 the DOJ and Texas CIDs; and
- 8 • The end date for review of Ms. Porco’s ESI shall be January 2011.

9 4. Amazon will search the ESI of Jeff Bezos solely for correspondence between Mr.
10 Bezos and any Defendant; the time period covered by the search shall be January 1, 2008 – April
11 11, 2012.

12 5. Amazon will search the ESI of Ian Freed solely for correspondence between Mr.
13 Freed and any Defendant; the time period covered by the search shall be January 1, 2008 – April
14 11, 2012.

15 6. Amazon will search the ESI of John Lange, in-house attorney, using the search
16 terms listed in Appendix A for non-duplicative, external emails only; the time period covered by
17 the search shall be January 1, 2008 – April 11, 2012.

18 7. Amazon will search the files of David Zapolsky, in-house attorney, solely for
19 correspondence with U.S regulators regarding the investigations of the price-fixing conspiracy at
20 issue in the underlying litigation; the time period covered by the search shall be January 1, 2008
21 – April 11, 2012.

22 8. Amazon will produce the documents that it made available to the European
23 Commission in connection with its investigation of a price-fixing conspiracy in Europe involving
24 Apple and the publisher defendants in the underlying litigation, except that Amazon will not
25 produce documents that are privileged under U.S. law. Amazon will not be required to review or
26 produce documents that pertain to Europe from the ESI files of its custodians, even if such
27 documents are hit by the search terms.

1 9. To the extent not already produced by Amazon, it will search for each agency
2 agreement between Amazon and any publisher relating to U.S. sales of eBooks in effect prior to
3 April 11, 2012. (Amazon will also produce any publisher agreement that is hit by the search
4 terms in the files of the custodians in Paragraphs 3 and 6, herein.)

5 10. Amazon will produce all documents that are captured by the searches described
6 above that respond to the Subpoena, as modified (*see* ¶ 11).

7 11. The Subpoena is modified as follows:

- 8 i. Amazon will not be required to search for or produce any documents that
9 relate solely or primarily to devices, including without limitation
10 eReaders.
11 ii. Amazon will not be required to search for or produce documents that
12 relate solely or primarily to its publishing business, including without
13 limitation, self-publishing (Kindle Direct Publishing).
14 iii. Amazon will not be required to search for or produce documents that
15 reveal its non-public, forward-looking plans or strategies in any line of
16 business.
17 iv. Amazon will not be required to search for or produce documents that
18 relate to its pricing “algorithm” or the methods it uses to determine retail
19 prices for eBooks.
20 v. Except as expressly provided in Paragraphs 7 and 8, herein, Amazon will
21 not be required to search for or produce documents relating to any other
22 government investigation or inquiry.

23 12. Amazon’s search for and production of documents and data as set out herein will
24 be sufficient to comply fully with the Subpoena.

25 13. Apple is ordered to reimburse Amazon for the costs of complying with the
26 Subpoena, as modified, including all outside attorneys’ fees (for review of documents prior to
27 production) and vendor fees.

DATED this ____ day of October, 2012.

United States District Judge

1 Presented by:

2 s/ Michael E. Kipling

3 Michael E. Kipling, WSBA #7677

4 Marjorie A. Walter, WSBA #40078

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12 *Counsel for Amazon.com, Inc.*

CERTIFICATE OF SERVICE

I do hereby certify that on this 14th day of September, 2012, I caused to be served a true and correct copy of the foregoing *[Proposed] Order Granting Motion to Quash or Modify Subpoena Duces Tecum* by method indicated below and addressed to the following:

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Delivery Via:
☐ U.S. Mail
☐ Overnight Mail
☐ Facsimile
☐ Hand Delivery
☒ E-Mail Only
☐ CM/ECF

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☐ Facsimile
☐ Hand Delivery
☒ E-Mail Only
☐ CM/ECF

DATED this 14th day of September, 2012.

s/ Michael E. Kipling
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Counsel for Amazon.com, Inc.

APPENDIX A

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11 99
12 99
14 99
9 99
agency
Allessi
“American Grown”
Apple
Arnaud or Arnoud
“Authors Guild”
B&N
backlist
Baldacci
Barnesandnoble or barnes or BN or “Barnes & Noble” or “bn.com” or “book.com”
BDB or “Black Dagger” or “J R Ward”
bestseller or best*seller*
Big w/5 (six or 6)
Borders
Boycott
buy /2 button
Cannibaliz*
“Charlaine Harris”
Commission*
Costco
Cue or Eddy
Cussler
Customer* w/10 complain*
(David /5 Young) or “de Young”
“day and date”

APPENDIX A

“day or date”
“Dead in the Family”
delay* /5 (release or eBook* or e-book* or title)
“Diary of a wimpy kid”
Disney
(dlp or “digital list price”) /5 (plp or “physical list price”)
Dohle
(E*book or eBook*) /10 hardcover or hardback
Eulau
frontlist
Gompertz
Hachette
HarperCollins or HC or Harper
“Harry Potter”
hbgusa
Holtzbrink or Holtzbrinck
Horner
iBook*
iPad
iPhone /10 (Kindle or app* or eBook* or eReader* or book or Nook)
“Jamie Oliver”
“Jim Butcher” or “Dresden Files”
Jobs (case sensitive)
Kennedy
(loan or lend*) /10 (publisher* or prime)
“Lover Mine”
Lynch
Macmillan
Madeline or (MM /10 “random house” or “RH”) or McIntosh or “Mc Intosh”

APPENDIX A

Maja
MAP
(Market w/10 control) or “market share” or ((market /5 share) and (ebook* or e-book*))
Markus
MFC or “most favored customer”
MFN or “most favored nation” or Most w/5 favored w/5 nation
“Michelle Obama”
Minimum w/5 advertis* w/5 pric*
Murray
“new release”
Nourry
(NYT or “New York Times” or “NY Times”) /10 (list or bestseller or “best seller” or (best /2 sell*) or bestsell*)
Penguin
Picoult
pric* /10 sensitiv* or model* or set* or resale* or resell* or maint* or stud* or analy* or promo* or temp* or low* or predat* or fix* or regulat* or manipul* or strateg* or control* or rais* or high*
(Random /5 House) or *randomhouse* or RH
Redmayne
Reidy
Riggio
RPM
Sargent
Schiller
Selleck
Shanks
“Silent Sea”
Simon or (Simon /2 Schuster) or (SS) or *simonandschuster*
SOR or (Seller* w/5 record)

APPENDIX A

Stockett
Strateg* /10 (ebook* or e-book*)
“The Help”
Turow
Walmart or Wal*mart
wholesale /20 model* or agreement* or distribut* or switch* or chang*
wiley
windowing or “to window”